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NO. 84-956

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PAUL SHAW,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Whether this Court should grant a writ of certiorari to examine the allegation that recordation of vehicle identification numbers by an officer from the exterior of the vehicle, during the conduct of a search pursuant to a valid warrant, is in itself an illegal search in violation of the Fourth Amendment to the United States Constitution?

2.

Whether this Court should grant a writ of certiorari to examine the Petitioner's allegations that information provided in support of a search warrant was "stale," where the subject of the search warrant was the front end of a vehicle which was

reasonably likely to be present at the location named in the warrant?

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PART ONE

STATEMENT OF THE CASE

Petitioner, Paul Shaw, was indicted in the Superior Court of

Walker County, Georgia, for the offenses of theft by receiving stolen property and criminal use of an article with an altered identification mark. Thereafter, the Petitioner filed a motion to suppress certain information obtained by means of a search of his business premises, alleging flaws in the search warrant and that the actual search conducted exceeded the scope of the search warrant. While at the Petitioner's business premises, police officers had observed and recorded the vehicle identification numbers (VIN) of each vehicle on the Petitioner's premises, and it was later determined that two of these vehicles were stolen. The trial court granted the Petitioner's motion to suppress.

The trial court's granting of the motion to suppress was then appealed by the State to the Court of Appeals for the State of Georgia, which reversed the trial court's decision. State v. Shaw, 170 Ga. App. 404, 317 S.E.2d 298 (1984). The Court of Appeals for the State of Georgia denied rehearing of the Petitioner's case on March 21, 1984.

The Petitioner then sought a writ of certiorari to the Supreme Court of Georgia, which was granted, and the decision of the Court of Appeals for the State of Georgia was affirmed. Shaw v. State, 253 Ga. 382, ___ S.E.2d ___ (1984).

Petitioner now seeks a writ of certiorari from this Court to review the affirmance of the decision of the

Court of Appeals by the Supreme Court of Georgia.

Further facts may be developed herein as necessary for a more thorough illumination of the issues presented to this Court for resolution.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

A. THE SUPREME COURT OF GEORGIA CORRECTLY DETERMINED THAT THE RECORDATION OF VEHICLE IDENTIFICATION NUMBERS BY A POLICE OFFICER FROM THE EXTERIOR OF THE VEHICLE, DURING THE CONDUCT OF A SEARCH PURSUANT TO A VALID WARRANT, WAS NOT A SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT AND DOES NOT VIOLATE THE "PLAIN VIEW DOCTRINE."

Petitioner contends that the recordation of vehicle identification numbers from the exterior of a vehicle, without a warrant expressly authorizing such recordation, is a violation of his rights under the Fourth Amendment to the United States Constitution. Respondent submits that such an action does not amount to a search within the meaning of the Fourth Amendment, and the recordation of such vehicle identification numbers was authorized by the "Plain View" doctrine.

The Supreme Court of Georgia recounted the particular facts leading to the challenged search as follows:

> Police officers entered the open business premises of Shaw's automobile repair shop

during business hours, for the purpose of executing a search warrant relating to the front-half of a specified motor vehicle which was thought to be stolen. Under instructions of their superiors, they looked through the windshields of vehicles parked on Shaw's outdoor lot, and wrote down vehicle identification numbers, which were visible on the dashboard of each vehicle. No vehicle was entered; no door of any vehicle was opened; no physical object was seized from the vehicles. Two vehicles subsequently

identified by computer check as stolen later were impounded.

Shaw v. State, 253 Ga. 382, ___ S.E.2d ___ (1984). The Petitioner claimed this recordation was a search in violation of the Fourth Amendment. Id.

Citing this Court's decision in Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535 (1983), the Supreme Court of Georgia concluded that the Petitioner had no legitimate expectation of privacy as to the vehicle identification numbers which could be viewed from the outside of the vehicles by either an inquisitive passerby or diligent police officers, and therefore the action of the officers in the instant case was not a

search within the meaning of the Fourth Amendment. Shaw v. State, 253 Ga. 382-83, citing, Texas v. Brown, 103 S.Ct. at 1542.

The Supreme Court of Georgia correctly applied federal constitutional principles in the rejection of the Petitioner's claims. This Court has noted that the essential purpose of the Fourth Amendment is to shield citizens from unwarranted intrusions into their privacy. Jones v. United States, 357 U.S. 493, 498 (1958). A search and observation of the exterior of an automobile, even to the point of the obtaining of physical evidence, has been held by this Court not to be an invasion of such privacy and is therefore not an unreasonable search

under the Fourth and Fourteenth Amendments. Cardwell v. Lewis, 417 U.S. 583, 592 (1974). The examination of a vehicle is far less intrusive on a person's Fourth Amendment rights than a search of one's person or a building. Id. at 590, citing, Almeida-Sanchez v. United States, 413 U.S. 266, 279 (1973). "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects." Id. at 590.

As noted in Brown, when property is left in a public place, police may need no justification under the Fourth Amendment for their access to the item. Brown at 1540-41 n. 4. An officer's mere observation of an item

left in plain view generally involves no Fourth Amendment search, and the information obtained as a result of such an observation in plain sight may be the basis for probable cause or reasonable suspicion of illegal activity. Id.

In the instant case, investigating police officers read various vehicle identification numbers from the exterior of the vehicles. The numbers were readily apparent on the dash-boards of the vehicles, as viewed through the windshields. As with the vehicle's license plate number, the VIN was placed so that it could be readily observed from the exterior of the vehicle for the purposes of identifying the vehicle. The Petitioner in the instant case could

have no legitimate expectation of privacy regarding the VIN. Therefore, the recordation of these numbers was not a search within the meaning of the Fourth Amendment, and gives rise to no constitutional violation on behalf of the Petitioner.

Additionally, Respondent notes that the police officers involved took the actions complained of while conducting a lawful search at the Petitioner's public place of business during normal business hours. The Petitioner himself concedes that, "the initial intrusion of the officers onto Petitioner's business premises was lawful." (See Petitioner's brief, p. 19.) It has long been settled that objects falling in plain view of an officer who has a right to be in the

position to have that view are subject to seizure and may be introduced into evidence. Harris v. United States, 390 U.S. 234, 236(5) (1968); accord, Ker v. California, 374 U.S. 23, 43 (1963). Therefore, the investigating police officers had met the first prong of the "plain view exception," as first expressed in Coolidge v. New Hampshire, 403 U.S. 443 (1971).

As explained by this Court in its plurality opinion in Texas v. Brown, supra, the discovery of stolen property at the Petitioner's business was also "inadvertent." There is no indication in the record of the instant case that the police officers had anything beyond a generalized expectation that there was the possibility that some of the cars in

Petitioner's possession might be stolen. See Brown at 1543. The officers had no reason to believe that any particular object located on the business premises was actually stolen, and therefore this created no bar to the "search" conducted here. Id. at 1543-44.

Finally, the plurality of this Court held in Brown that the "immediately apparent" language of Coolidge did not establish any requirement that a police officer "know" that certain items are contraband or evidence of a crime. Brown at 1542. A "practical, non-technical" probability that incriminating evidence is involved is all that is required before any seizure of an object could be made.

Brown at 1542-43. Given the nature of the police information in the instant case, and the fact that no seizure of property was actually made at the time of the search, there was a sufficient practical, non-technical probablity that incriminating evidence might be uncovered at the Petitioner's place of business.

Accordingly, no Fourth Amendment violation is presented by the officer's observations of the VIN readily apparent through the windshields of the vehicles, and the Supreme Court of Georgia correctly determined that the Petitioner's allegation is without merit. Therefore, for all of the above and foregoing reasons, Respondent asserts that the Petitioner has failed to

present any substantive issue of federal law which would warrant review by this Court.

B. THE COURT OF APPEALS FOR THE STATE OF GEORGIA CORRECTLY DETERMINED THAT INFORMATION PROVIDED IN SUPPORT OF THE SEARCH WARRANT OF THE PETITIONER'S BUSINESS PREMISES WAS NOT "STALE," WHERE THE SUBJECT OF THE WARRANT WAS REASONABLY LIKELY TO BE PRESENT AT THE LOCATION NAMED IN THE WARRANT.

Petitioner contends that the search warrant of his business premises was supported by "stale" information. Respondent submits that the Court of Appeals for the State of

Georgia correctly determined that there was no merit to the Petitioner's contention.

The Court of Appeals for the State of Georgia summarized the facts surrounding the issuance of the challenged search warrant as follows:

> The evidence at the suppression hearing disclosed that on February 22, 1983 Scott Roberts, a (Georgia Bureau of Investigation) agent with the Auto Theft Squad, received information from an FBI agent that on September 15, 1982 Paul Shaw had sold a rear clip (the rear half of an automobile) of a stolen 1981 Chevrolet Monte Carlo in Cooksville,

Tennessee. The car had been stolen on August 21, 1982. Based on this information, together with information that the National Auto Theft Bureau had a current investigation of the Paul Shaw Body Shop and the FBI had investigated him in the past, Roberts obtained a search warrant. In his affidavit Roberts stated that this information gave him probable cause to believe the front clip, engine and transmission of the stolen Monte Carlo was concealed at Shaw's Body Shop.

The warrant was issued on February 22, 1983 authorizing

> Roberts to search for and seize the front clip, engine and transmission of the stolen Monte Carlo.

State v. Shaw, 170 Ga. App. 404, 317 S.E.2d 298 (1984).

Petitioner claimed that as the warrant was not issued until five months and one week after the alleged sale of the rear clip of the stolen car, the information was "stale" and could not support probable cause. The Court of Appeals for the State of Georgia rejected the Petitioner's claim, looking at several factors, including size, quantity, bulkiness, transportability and the nature of the product. Id., citing, State v. Boswell, 131 Ga. App. 657, 660-661(1), 206 S.E.2d 682 (1974). The court stated that:

> Considering the fact that the front clip could not be driven, and there was no indication that it had been sold, it was reasonable to assume that the front clip was at Shaw's Body Shop, since Shaw was the individual who had sold the rear clip. Thus, we find the information Roberts received was not stale under the circumstances of this case, and he had probable cause to believe the Monte Carlo was at Shaw's Body Shop.

State v. Shaw, 170 Ga. App. at 405.

The decision of the Court of Appeals for the State of Georgia was demonstrably in accord with this

Court's evaluations of probable cause for a search warrant, as expressed in Illinois v. Gates, ___ U.S. ___, 103 S.Ct. 2317 (1983). In Gates, a majority of this Court held, regarding the issuance of a search warrant based upon an anonymous informant's tip, that:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will

> be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

Id. at 2332.

In the instant case, the Court of Appeals for the State of Georgia in effect evaluated the totality of the circumstances presented in the instant case and determined that it was highly likely that evidence of a crime would be present at the Petitioner's business premises. Therefore, the information presented to the issuing magistrate was not "stale," but provided sufficient probable cause for the issuance of the warrant.

Additionally, Respondent notes that the staleness of the warrant was not addressed by the Supreme Court of Georgia, and it is the decision of the Supreme Court of Georgia which the Petitioner seeks to have reviewed in the instant case.

Finally, Respondent notes that the Supreme Court of Georgia has adopted this Court's analysis of Illinois v. Gates, supra, to evaluate allegations of staleness regarding information in support of search warrants. State v. Luck, 252 Ga. 347, 312 S.E.2d 791 (1984). In Luck, the Supreme Court of Georgia noted that the precise date of an occurrence is not essential, but rather the inquiry which should be made by the magistrate is as to whether the factual statements within

the affidavit are sufficient to create a reasonable belief that the conditions described in the affidavit might yet prevail at the time of the issuance of the search warrant. Id. This was the approach utilized by the Court of Appeals in the instant case.

Therefore, for all of the above and foregoing reasons, Respondent asserts that the Petitioner has failed to present any substantive issue of federal law which would warrant review by this Court.

CONCLUSION

This Court should refuse to grant a writ of certiorari to the Supreme Court of Georgia, as it is manifest that there is no substantial federal question not previously decided by this Court and the decision sought to be reviewed is demonstrably in accord with the applicable decisions of this Court.

Respectfully submitted,

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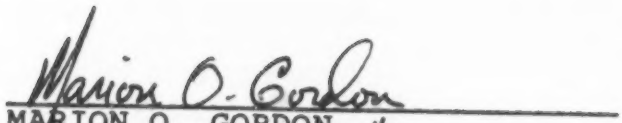

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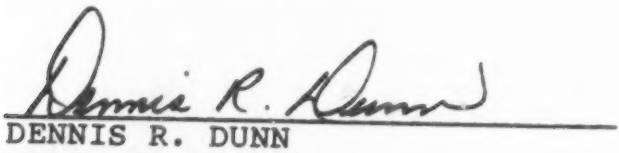

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CERTIFICATE OF SERVICE

I, WILLIAM B. HILL, JR., a member of the Bar of the Supreme Court of the United States and counsel of record for the Respondent, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing three copies of same in the United States mail with the proper address and adequate postage to:

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This 16th day of January, 1985.

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